

**FEDERAL ELECTION COMMISSION**

**999 E Street, N.W.  
Washington, D.C. 20463**

**FIRST GENERAL COUNSEL'S REPORT**

MUR: 6630

DATE COMPLAINT FILED: August 16, 2012

DATE OF NOTIFICATION: August 23, 2012

LAST RESPONSE RECEIVED: October 3, 2012

DATE ACTIVATED: February 21, 2013

ELECTION CYCLE: 2012

EXPIRATION OF SOL: June 22, 2017

COMPLAINANT:

Wiselet Ked Rouzard

RESPONDENTS:

Washoe County Republican Party and Lynne  
Hartung in her official capacity as treasurer  
Washoe County Republican Central Committee  
Nevada Republican Party

RELEVANT STATUTES  
AND REGULATIONS

2 U.S.C. § 433(b)  
2 U.S.C. § 441a(a)(5)(B)  
11 C.F.R. § 100.5(g)  
11 C.F.R. § 102.2(b)  
11 C.F.R. § 110.3

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

**I. INTRODUCTION**

This matter raises the question of whether the Washoe County Republican Party, a party committee located in Reno, Nevada, is affiliated with the Nevada Republican Party (or "State Party"). The Complaint asserts that the Washoe County Republican Party is a county affiliate of the Nevada Republican Party under the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations because it is funded by the State Party and subject to the State Party's management and control. The Washoe County Republican Party maintains that, because it has sole authority over its funds and activities, it is not affiliated with the Nevada

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1 Republican Party; however, the Nevada Republican Party asserts that the Washoe County  
2 Republican Party is affiliated with the State Party.

3 The factual record here does not settle whether the Washoe County Republican Party and  
4 the Nevada Republican Party are affiliated under the Act and Commission regulations. But even  
5 assuming they are affiliated, neither committee made nor received any excessive contributions.  
6 Also, the Washoe County Republican Party intends to terminate. Accordingly, we recommend  
7 that the Commission dismiss the allegations regarding the Washoe County Republican Party and  
8 the Washoe Central Committee as a matter of prosecutorial discretion and send a letter to the  
9 Washoe County Republican Party reminding it about the presumption of affiliation and the  
10 shared contribution limit between state and subordinate party committees. *See Heckler v.*  
11 *Chaney*, 470 U.S. 821 (1985). We also recommend that the Commission find no reason to  
12 believe that the Nevada Republican Party violated the affiliation provisions of the Act and  
13 Commission regulations.

## 14 II. FACTUAL AND LEGAL ANALYSIS

### 15 A. Factual Background

16 The Complaint alleges that the Washoe County Republican Party (which is governed by  
17 the Washoe County Republican Central Committee ("Washoe Central Committee")) falsely  
18 claims that it is not affiliated with the Nevada Republican Party (which is governed by the  
19 Nevada Republican Central Committee ("Nevada Central Committee")).<sup>1</sup> Compl. at 1. The  
20 Washoe County Republican Party's Statement of Organization, filed with the Commission on  
21 June 22, 2012, does not list any affiliated political committees, and an accompanying letter from

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<sup>1</sup> Consistent with the Responses of the Washoe County Republican Party and the Nevada Republican Party, this Report treats the Washoe County Republican Party as interchangeable with the Washoe Central Committee, and the Nevada Republican Party as interchangeable with the Nevada Central Committee.

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1 the Washoe County Republican Party's treasurer Lynne L. Hartung, dated June 25, 2012,  
2 confirms that the Washoe County Republican Party will conduct its activity as a federal local  
3 party committee that is not affiliated with its state party committee.<sup>2</sup> See Letter from Lynne L.  
4 Hartung, Treasurer, Washoe County Republican Party, to Chair Caroline C. Hunter and Vice  
5 Chair Ellen L. Weintraub, FEC (Jun. 25, 2012). The letter claims that the Washoe County  
6 Republican Party is not funded by, or under the management or control of, the Nevada Central  
7 Committee, and does not conduct its activity in cooperation, consultation, or concert with, or at  
8 the request or suggestion of, the Nevada Central Committee. *Id.*

9 The Complaint asserts that the Washoe County Republican Party is affiliated with the  
10 Nevada Republican Party for several reasons. First, the Complaint contends that the Washoe  
11 County Republican Party received funding from the Nevada Central Committee in 2010 and  
12 2011. Compl. at 1. Second, the Complaint alleges that provisions in the Washoe Central  
13 Committee and Nevada Republican Party bylaws, which are attached to the Complaint,  
14 demonstrate that the Washoe County Republican Party is "under the management and control" of  
15 the State Party. *Id.* at 1 (emphasis and internal quotation marks omitted). Specifically, the  
16 Complaint asserts that under Washoe Central Committee bylaws, officers of the Washoe County  
17 Republican Party are subject to the bylaws of the Nevada Republican Party, the Washoe County  
18 Republican Party Convention elects delegates to the State Party convention, the Nevada  
19 Republican Party has the power to require a convention of the Washoe County Republican Party,  
20 and the Washoe Central Committee elects a delegation to the Nevada Central Committee. *Id.* at

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<sup>2</sup> The Washoe County Republican Party's original Statement of Organization classified it as a state committee of the Republican Party. The Washoe County Republican Party filed Amended Statements of Organization on July 19, 2012, and August 24, 2012. These Amended Statements of Organization reclassify the Washoe County Republican Party as a "subordinate" committee of the Republican Party but maintain that it is not affiliated with the Nevada Republican Party or any other state party committee.

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1 1-2. Also, under Nevada Republican Party bylaws, officers and representatives of the Washoe  
2 Central Committee allegedly exercise political and financial control over the State Party. *Id.* at  
3 2. Finally, the Complaint alleges that Dave Buell, Chairman of the Washoe County Republican  
4 Party, claimed during a conference call that the filing of the Statement of Organization with the  
5 Commission was a "legal and financial game," and that the Washoe County Republican Party is  
6 not disaffiliating from the Nevada Republican Party. *Id.* The Complaint also asserts that Buell  
7 sought oversight and influence over State Party business during Nevada Republican Party  
8 Executive Committee calls. *Id.*

9 The Washoe County Republican Party maintains that it is not affiliated with the Nevada  
10 Central Committee. Its Response asserts that it is governed by separate bylaws as determined by  
11 the Washoe Central Committee and that it raises and spends funds at its sole discretion. Washoe  
12 County Republican Party Resp. at 1. For six reasons, the Washoe County Republican Party  
13 contends that it is not affiliated with the Nevada Central Committee under 11 C.F.R.

14 § 110.3(b)(3):

- 15 • First, it does not receive funds from any other political committee established, financed,  
16 maintained or controlled by any party unit.  
17
- 18 • Second, although the chairman of the Washoe County Republican Party is a member of  
19 the executive board of the Nevada Central Committee under the Nevada Central  
20 Committee's bylaws, the Washoe County Republican Party does not operate under the  
21 direction of the Nevada Central Committee and has its own officers.  
22
- 23 • Third, the Washoe County Republican Party does not consult with the Nevada Central  
24 Committee and the Nevada Central Committee has no jurisdiction over how the Washoe  
25 County Republican Party spends its funds.  
26
- 27 • Fourth, the funds that the Washoe County Republican Party received from the Nevada  
28 Central Committee — \$398.60 in November 2010 and \$150 in April 2011 — were  
29 specifically allocated through the Nevada Central Committee's "United Republican  
30 Fund," whereby donors could allocate 10% of their contributions to the Nevada Central

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Committee to other Republican organizations or county parties, and were not maintained or financed by the Nevada Central Committee.

- Fifth, the state and federal disclosure reports of the groups show that they receive and expend their funds based on their own fundraising abilities and needs.
- Sixth, the Washoe County Republican Party chairman who sits on the Nevada Central Committee board is one out of twelve board members, and only 52 out of more than 360 members of the Nevada Central Committee are from Washoe County.

*Id.* at 2-3.

In contrast, the Nevada Republican Party asserts that the Washoe County Republican Party is affiliated with the Nevada Central Committee. The Response of the Nevada Republican Party states that all counties in Nevada are considered to be affiliated with the Nevada Central Committee by the state of Nevada and the FEC. Nevada Republican Party Resp. at 1. The Response explains that the Washoe County Republican Party chairman is a voting member of the board of the Nevada Central Committee; the Washoe County Republican Party elects members to attend all meetings of the Nevada Central Committee; and the bylaws of both groups provide for mutual authority with respect to financial decisions. *Id.* The Nevada Republican Party asserts that it never encouraged any county committee to file with the Commission or to claim to be unaffiliated, and was unaware that the Washoe County Republican Party had done so until after the fact. *Id.* When the Nevada Central Committee learned about the filing, its chairman contacted the Commission's Information Division regarding affiliation guidelines and was told that the Commission considers the Nevada Central Committee and Washoe County Republican Party to be "one and the same entity." *Id.* The Nevada Republican Party claims that it has not violated the Act and that based on a comparison of Washoe County Republican Party reports to Nevada Central Committee records, it has not violated any contribution limits. *Id.* at 1-2.

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**B. Legal Analysis**

Under the Act, political committees "established or financed or maintained or controlled" by the same persons or group of persons are treated as a single political committee for the purposes of the contributions they make or receive. 2 U.S.C. § 441a(a)(5). Such committees are called "affiliated committees," and the names of any affiliated committees must be disclosed on a political committee's Statement of Organization filed with the Commission. 2 U.S.C. § 433(b); 11 C.F.R. §§ 100.5(g), 102.2(b), and 110.3. An exception to this rule exists, however, for a political party's national committee and its state committee, which are not treated as affiliated, and therefore do not share contribution limits. 2 U.S.C. § 441a(a)(5)(B); 11 C.F.R. § 110.3(b)(1)(i) and (ii).

The Act, however, does not exempt political party committees at the county or other subdivisional level of party organization within a State from the affiliation rules of section 441a(a)(5). Moreover, the Commission presumes that the political committees of a state party and those of subordinate state party committees<sup>3</sup> are affiliated, absent a showing of lack of funding and coordination between the political committees. 11 C.F.R. § 110.3(b)(3)(i)-(ii).

For example, in Advisory Opinion 1978-09 (Republican State Central Committee of Iowa), the Commission determined that the presumption of affiliation would be unwarranted where various county committees were, by statute, separate and independent from the Republican State Central Committee of Iowa; the groups had separate bylaws, constitutions, and

<sup>3</sup> A subordinate committee is "any organization that [is] at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State or any organization under the control or direction of the State committee, and is directly or indirectly established, financed, maintained, or controlled by the State, district, or local committee." 11 C.F.R. § 100.14(c).

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1 funding aside from limited joint fundraising; and the state committee had no influence over how  
2 the county committees spent their funds.

3 The record here is unclear as to whether the Washoe County Republican Party overcame  
4 the presumption of affiliation with the Nevada Republican Party. The Washoe County  
5 Republican Party received a small amount of funding, approximately \$550, from the Nevada  
6 Central Committee in 2010 and 2011; the Washoe County Republican Party contends, however,  
7 that this funding came from donors allocating a portion of their contributions, and not from the  
8 Nevada Central Committee directly.<sup>4</sup> The bylaws of the organizations also call for overlapping  
9 leadership that may result in consultation regarding the groups' activities and expenditures, but  
10 the Washoe County Republican Party claims that it has sole authority over how it spends its  
11 funds.

12 Notwithstanding the uncertain factual record here, we recommend that the Commission  
13 dismiss as a matter of prosecutorial discretion the Complaint's allegations that the Washoe  
14 County Republican Party and Lynne Hartung in her official capacity as treasurer and the Washoe  
15 County Republican Central Committee violated 2 U.S.C. § 433(b) and 11 C.F.R. § 102.2(b). *See*  
16 *Heckler v. Chaney*, 470 U.S. 821 (1985). Disclosure reports filed by the Washoe County  
17 Republican Party and the Nevada Republican Party confirm the State Party's assertion that even  
18 if the committees were affiliated and shared a contribution limit, they did not make excessive  
19 contributions to any candidates, nor did any contributors to the committees make contributions in  
20 excess of the combined limit for state and local party committees. Further, it does not appear  
21 that the Washoe County Republican Party intends to continue its operations as a federal

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<sup>4</sup> Although the Washoe County Republican Party did not provide any records to buttress this assertion, funds received through this type of allocation may be akin to the joint fundraising referenced in Advisory Opinion 1978-09, and therefore not necessarily considered funds received from another political party.

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1 committee, as its treasurer attempted to file Termination Reports with the Commission on  
2 February 20, 2013, March 20, 2013, April 15, 2013, and May 17, 2013, and the Committee has  
3 no remaining cash on hand.<sup>5</sup>

4 Additionally, we recommend that the Commission remind the Washoe County  
5 Republican Party about the Commission's presumption of affiliation between state party  
6 committees and subordinate party committees and the resulting shared contribution limit, should  
7 the Washoe County Republican Party become involved in federal elections in the future. Finally,  
8 we recommend that the Commission find no reason to believe that the Nevada Republican Party  
9 violated 2 U.S.C. § 433(b) and 11 C.F.R. § 102.2(b) and close the file.

10 **III. RECOMMENDATIONS**

- 11 1. Dismiss, as a matter of prosecutorial discretion, the allegations that the Washoe  
12 County Republican Party and Lynne Hartung in her official capacity as treasurer and  
13 the Washoe County Republican Central Committee violated 2 U.S.C. § 433(b) and  
14 11 C.F.R. § 102.2(b) and issue a reminder letter to the Washoe County Republican  
15 Party;  
16  
17 2. Find no reason to believe that the Nevada Republican Party violated 2 U.S.C.  
18 § 433(b) and 11 C.F.R. § 102.2(b);  
19  
20 3. Approve the attached Factual and Legal Analyses;  
21  
22 4. Approve the appropriate letters; and,

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<sup>5</sup> In consultation with the Reports Analysis Division, we sent the Washoe County Republican Party's treasurer a letter advising her that the Washoe County Republican Party will not be permitted to terminate until this matter is resolved. See Letter from Kasey S. Morgenheim, Attorney, FEC to Lynne Hartung, Treasurer, Washoe County Republican Party (Apr. 12, 2013).

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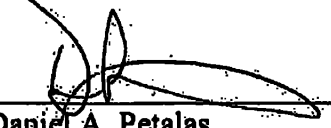


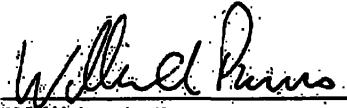
5. Close the file.

05/22/13  
Date

Anthony Herman  
General Counsel

BY:

  
Daniel A. Petalas  
Associate General Counsel  
for Enforcement

  
William A. Powers  
Assistant General Counsel

  
Kasey S. Morgenheim  
Attorney

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